IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP NO.14035 OF 2006

DATE OF DECISION: 11.09.2006

Health Secretary Chandigarh Administration ....Petitioner

Versus

Central Administrative Tribunal and another ...Respondents.

CORAM: HON'BLE MR.JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

PRESENT: Ms. Ritu Singh, Advocate for the petitioner.

J.S. Khehar, J. (oral)

The controversy in the instant writ petition pertains to the validity of the order passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, in Original Application No.196-CH/2004 on 8.3.2006. It would be pertinent to mention that the respondent Dr.Shiv Kumar Garg claimed promotion to the post of Senior Medical Officer. His aforesaid claim was not acceptable on account of the fact that it was believed that he did not fulfil the qualifications prescribed for promotion to the post of Senior Medical Officer under the Chandigarh Administration Medical Posts (Group-A) Recruitment Rules, 1983 (hereinafter referred to as the 1983 Rules). Under the aforesaid Rules, the educational qualifications prescribed for appointment by way of direct recruitment to the post of Senior Medical Officer, inter alia, include a post graduation qualification in the required speciality. As per mandate of the Rules under reference, 50 percent of the posts are to be filled by way of promotion, 40

percent by way of transfer on deputation, and the remaining 10 percent by way of direct recruitment. The question to be adjudicated upon, therefore, was whether the qualifications prescribed for appointment by way direct recruitment, were applicable in the matter of promotion to the post of Senior Medical Officer as well. On the issue in hand, the controversy came to be settled by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, while adjudicating upon the same issue raised by one Dr. D.D. Sharma, who had approached the Tribunal by filing Original Application No.825-CH/1988 decided on 17.7.1995. The Tribunal in its aforesaid determination arrived at the conclusion that the qualification under reference was only meant for appointment to the post of Senior Medical Officer by way of direct recruitment. It additionally arrived at the conclusion that the action of the authorities in applying the aforesaid qualifications to matters of promotion amounts to an unreasonable and invidious discrimination at the hands of the authorities who have themselves been seeking an amendment of the Rules under reference, so as to make it in conformity with the provisions contained in the Rules, prescribed for promotion to the post of Senior Medical Officer in the adjoining States of Punjab and Haryana. It is not a matter of dispute that such an amendment was eventually made on 8.11.2001, and that, the post graduation qualification, allegedly prescribed for promotion to the post of Senior Medical Officer, was done away with. Applying the conclusions drawn by the Tribunal in Dr. D.D. Sharma's case, wherein although Dr. D.D. Sharma did not possess the post graduation qualification, he was not found to be eligible for promotion to the post of Senior Medical Officer. The Tribunal yet again in the case of the respondent Dr. Shiv Kumar Garg found him to

be eligible for promotion for exactly the same reasons. It is not a matter of dispute that the order passed in Dr. D.D.Sharma's has since been implemented.

In view of the above, we find no infirmity in the order dated 8.3.2006 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, in Original Application No.196-CH/2004. We reiterate the conclusions drawn therein to the effect that the sealed cover procedure adopted regarding the claim of the respondent for promotion to the post of Senior Medical Officer by the Departmental Promotion Committee on 27.5.1999, be given effect to.

Disposed of accordingly.

(J.S. Khehar)
Judge

(S.D. Anand)
Judge

September 11, 2006.
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